

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Western Division - Raleigh

Case No. 5:16-CV-221

JOHN ARCHIE CAIN,

Plaintiff,

vs.

WAL-MART STORES, INC.;
WAL-MART STORES EAST, LP; and
WAL-MART ASSOCIATES, INC.,

Defendants.

NOTICE OF REMOVAL

NOW COME the Defendants, WAL-MART STORES, INC., WAL-MART STORES EAST, LP, and WAL-MART ASSOCIATES, INC., through undersigned counsel, and pursuant to 28 U.S.C. § 1331, hereby removes this case from the General Court of Justice, Superior Division, Carteret County, North Carolina. The defendant denies the allegations of negligence contained in the Complaint and the damages claimed therein, and files this Notice without waiving any defenses, exceptions, or obligations that may exist in their favor instate or federal court. In support of this Notice of Removal, the defendant shows unto the Court the following:

1. On or about March 17, 2016, Plaintiff commenced this action by filing a Complaint in the Superior Court of Cumberland County, North Carolina captioned as *JOHN ARCHIE CAIN vs. WAL-MART STORES, INC.; WAL-MART STORES EAST, LP; and WAL-MART ASSOCIATES, INC., Civil Action No. 16-CVS-2067.*

2. Service of process was obtained upon the defendants on April 4, 2016

3. As more fully set out below, this case is properly removed to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because (1) this defendant has satisfied the procedural requirements for removal, and (2) this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

4. A copy of the state court complaint and all process and proceedings filed in state court, including notice to the state of removal, is attached hereto and constitute copies of all pleadings filed with the state court.

I. Defendant has Satisfied the Procedural Requirements for Removal

A. This Notice of Removal is being timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days of service on the defendant.

B. Generally the amount in controversy is determined by reference to the plaintiff's complaint. *JTH Tax, Inc. v. Frashier*, 624 F.3d 635, 639 (4th Cir. 2010). However, "[w]hen the amount of damages a plaintiff seeks is unclear, the court may look to the entire record before it and make an independent evaluation as to whether or not the jurisdictional amount is in issue." *Dash v. FirstPlus Home Loan Trust 1996-2*, 248 F. Supp. 2d 489, 498 (M.D.N.C. 2003) (internal quotation and citations omitted). North Carolina procedural rules requiring certain claims to be pled "in excess of certain dollar amount[s] . . . mak[es] it difficult to determine the exact amount in controversy." *Lee Elec. Constr., Inc. v. Eagle Elec., LLC*, 1:03CV00065, 2003 U.S. Dist. LEXIS 9956, *10 (M.D.N.C. June 10, 2003).

C. Plaintiff alleges that as the result of the negligence by the defendant that "a 50 pound bag of dog food fell from the top of an adjacent eight foot high stack of the dog food and landed on the plaintiff's head, neck and back as he was bending down to pick up

a 50 pounds bag of dog food from the 3 foot high stack.” Complaint Paragraph 14. Additionally, the plaintiff alleges that the plaintiff as sustained “significant, permanent and painful injury” and will continue to suffer “pain and discomfort and mental suffering for the rest of his life.” Complaint Paragraphs 28 and 33. The complaint also contains purported causes of action for punitive damages and for Unfair and Deceptive Trade Practices calling for treble damages and attorney’s fees.

II. Complete Diversity of Citizenship Exists Between Plaintiffs and Defendant.

A. There is complete diversity between Plaintiff, a citizen of North Carolina, and the Defendants, citizens of states other than North Carolina.

B. Plaintiff is alleged to be a resident of the State of North Carolina. Accordingly, North Carolina is the state in which Plaintiff is domiciled and, therefore, the state of which Plaintiff is a citizen for purposes of determining diversity.

C. Wal-Mart Stores, Inc., is and was at the time Plaintiff commenced this action, a corporation organized under the laws of the State of Delaware with its principal place of business in Arkansas, and, therefore, is a citizen of Delaware and Arkansas for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

D. Wal-Mart Stores East, LP, is and was at the time Plaintiff commenced this action, a corporation organized under the laws of the State of Delaware with its principal place of business in Arkansas, and, therefore, is a citizen of Delaware and Arkansas for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

E. Wal-Mart Associates, Inc., is and was at the time Plaintiff commenced this action, a corporation organized under the laws of the State of Delaware with its principal place of business in Arkansas, and, therefore, is a citizen of Delaware and Arkansas for

purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

WHEREFORE, the defendant respectfully requests this matter be removed to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Dated this 3rd day of May, 2016.

BROWN, CRUMP, VANORE & TIERNEY, L.L.P.

By: /s/ Michael W. Washburn
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Notice of Appearance was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Tiffany Roulhac
BRENT ADAMS & ASSOCIATES
P O Box 1389
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Counsel for Plaintiff

Dated this 3rd day of May, 2016.

BROWN, CRUMP, VANORE & TIERNEY, L.L.P.

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